

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

_____	)	
DONALD P. LARIVIERE	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. RE – 11 - 169
	)	
THE BANK OF NEW YORK AS	)	
TRUSTEE, LITTON LOAN SERVICING,	)	
L.P., BANK OF AMERICA, MORTGAGE	)	
ELECTRONIC REGISTRATION	)	
SYSTEMS, INC., JOHN and JANE DOES	)	
I through XX, inclusive	)	
Defendants.	)	
_____	)	

**NOTICE OF REMOVAL**

TO: The Honorable Judges of the United States District Court for the District of Maine

Pursuant to 28 U.S.C. §§ 1441 *et seq.*, Defendants Litton Loan Servicing, L.P. (“Litton”), Bank of New York, as Trustee (“BNY”) and Mortgage Electronic Registration Systems, Inc. (“MERS”)(collectively, “Defendants”) hereby remove the action captioned Donald P. Lariviere v. The Bank Of New York as Trustee, Litton Loan Servicing, L.P., Bank of America, Mortgage Electronic Registration Systems, Inc., John and Jane Does I through XX, inclusive, Case No.RE-11-169, now pending in the Maine Superior Court, York County, to the United States District Court for the District of Maine.

In so doing, Defendants state the following:

1. Previously, on or about August 31, 2009, Donald P. Lariviere and Doris G. Lariviere (“Larivieres”) (only Mr. Lariviere is named as a plaintiff in the present action), filed an action in Maine Superior Court, York County, as Donald P. Lariviere and Doris G. Lariviere v.

The Bank Of New York as Trustee, Litton Loan Servicing, L.P., Bank Of America, First Residential Network, Mortgage Electronic Registration Systems, Inc., et al., Case No. RE-09-061, concerning the same loan and property as the present action (the “First Action”).

2. The First Action was removed to this Court as Civil Action No. Civil Action No. 09-CV-00515-GZS.<sup>1</sup>

3. On July 1, 2010, this Court entered an order in the Prior Action dismissing First Residential Mortgage Network Inc. (not named as a defendant in the present action).

4. On July 1, 2010, this Court entered a Judgment of Dismissal in the prior action as to Defendants, Bank of New York as Trustee, Litton Loan Servicing LP, Mortgage Electronic Registration Systems Inc., and Bank of America.

5. Subsequently, on or about July 7, 2010, the Larivieres, filed a second action in Maine Superior Court, York County, Donald P. Lariviere and Doris G. Lariviere v. The Bank Of New York as Trustee, Litton Loan Servicing, L.P., Bank of America, Mortgage Electronic Registration Systems, Inc., John and Jane Does I through XX, inclusive, Case No. ALFSC-CV-2010-00210 (the “Second Action”) concerning the same loan and property as in the First Action.

6. The Second Action was removed to this Court as Civil Action No. 10-CV-00336-GZS.

7. On November 3, 2010, this Court entered a Judgment of Dismissal in the Second Action as to Defendants, Bank of New York as Trustee, Litton Loan Servicing LP, Mortgage Electronic Registration Systems Inc., and Bank of America.

8. On or about December 3, 2010, the Larivieres filed an Adversary Complaint with this United States Bankruptcy Court for the District of Maine (Portland) (hereinafter, the “Bankruptcy Court”), In re Donald Paul Lariviere and Doris Gabrielle Lariviere, Bankruptcy

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<sup>1</sup> Defendants include herein an abbreviated procedural history of the previous complaints.

Case No.: 10-20970; Donald Paul Lariviere and Doris Gabrielle Lariviere v. The Bank Of New York Mellon, F/K/A The Bank Of New York, As Trustee For The Certificate Holders of CWABSs, Inc., Asset Backed Certificates, Series 2006-SPS2; Litton Loan Servicing LP; MERS; and Marti Noriega; Adversary Proceeding Case No. 10-02065 (the “Third Action”) concerning the same loan and property as in the First and Second Actions.

9. On March 30, 2011, the Bankruptcy Court entered two orders dismissing the Larivieres’ claims with prejudice as to all defendants in the Third Action.

10. By order dated July 27, 2011, the Bankruptcy Court dismissed the Chapter 13 case.

11. On or about August 8, 2011, the plaintiff, Donald P. Lariviere, filed the present action in Maine Superior Court, York County, as Donald P. Lariviere v. The Bank Of New York as Trustee, Litton Loan Servicing, L.P., Bank Of America, First Residential Network, Mortgage Electronic Registration Systems, Inc., et al., Case No. RE-11-169 (the “Fourth Action”), concerning the same loan and property as the First, Second, and Third Actions.

12. According to the state court docket concerning the Fourth Action, no return of service has been filed with respect to any defendants, and no other proceedings have occurred. A copy of all papers served on Defendants in this matter are attached hereto as Exhibit A.

13. In the Complaint, Mr. Lariviere identifies himself as residing at 3 Devotion Avenue, Sanford, Maine. *Complaint*, ¶ 1.

14. Litton is a limited partnership organized under the laws of Delaware with its principal place of business located at 4828 Loop Central Drive, Suite 600, Houston, Texas. MERS is a corporation organized under the laws of Delaware with its principal place of business located at 1818 Library Street, Suite 300, Reston, Virginia. The Bank of New York Mellon, is

the successor entity to the Bank of New York, and is a New York State banking institution, with a principal place of business at One Wall Street, New York, New York. According to public filings, Bank of America is a Delaware corporation with a principal place of business located at 100 North Tryon Street, Charlotte, North Carolina.<sup>2</sup>

15. As a result, this Court has original subject matter jurisdiction over this action on the basis of 28 U.S.C. § 1332, as there is complete diversity of citizenship between the Larivieres and all defendants, and because the matter in controversy exceeds \$75,000.

16. Pursuant to 28 U.S.C. § 1446, Defendants' notice of removal is timely as it is filed within thirty (30) days of receipt of the complaint.

17. Pursuant to 28 U.S.C. § 1446, a copy of this Notice of Removal is being filed with the Maine Superior Court.

18. Defendants will file certified or attested to copies of all papers that have been filed in Superior Court.

**WHEREFORE**, Defendants respectfully requests that the above action now pending against it in the York County Superior Court in the State of Maine be removed therefrom to this Court.

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<sup>2</sup> Plaintiff does not specify whether he is referring to Bank of America Corporation or Bank of America, National Association. The difference is inconsequential for removal purposes as a national banking association is deemed a citizen of the state in which its main office is located. See 28 U.S.C. § 1348; Wachovia Bank, N.A. v. Schmidt, 546 U.S. 303, 307 (2006). Bank of America, National Association has the same Charlotte, North Carolina main office address as Bank of America Corporation.

LITTON LOAN SERVICING, L.P., BANK OF  
NEW YORK, AS TRUSTEE and MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS, INC.  
By their attorneys,

/s/ Adam J. Shub  
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Tel: 207.791.3000

Dated: August 24, 2011

CERTIFICATE OF SERVICE

I, Adam J. Shub, certify that a true and accurate copy of the foregoing document was sent by first-class mail, postage prepaid to the following addresses on August 24, 2011.

Donald P. Lariviere  
3 Devotion Avenue  
Sanford, ME 04073

Dianne Hill, Clerk  
York County Superior Court  
P.O. Box 160  
Alfred, ME 04002-0160

/s/ Adam J. Shub  
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